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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,141	02/04/2002	Joyce B. Palazzotto	50142US010	7314

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EXAMINER

LEWIS, AARON J

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 07/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/067,141

Applicant(s)
JOYCE B. PALAZZOTTO ET AL.

Examiner
AARON J. LEWIS

Art Unit
3761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/22/2002 AND 05/16/2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 04 6) ☐ Other: _____

Art Unit: 3761

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1-20 include language which is not supported by the specification as originally filed. That language includes the terminology "...said spacer further having a microphone extending therefrom;..."; and "...a microphone extending therefrom and into an interior of said face mask...".

Figures 5 and 6 of the instant application illustrate microphone 74 situated WITHIN the confines of the so called spacer 50. Neither drawing figures 5 and 6 nor the instant specification disclose a microphone extending THEREFROM. The microphone being situated within the confines of the spacer as disclosed and illustrated by the instant application differs from the arrangement in Birli et al.('693) patent which illustrates microphone 20 extending THEREFROM [the spacer element 18] (fig.2) and which illustrates microphone 20 extending THEREFROM AND INTO AN INTERIOR OF SAID FACE MASK (fig.3).

Interference

2. Claims 1-20 of this application has been copied by the applicant from U. S. Patent No. 5,463,693. This claim is not patentable to the applicant because for the following reasons:

Art Unit: 3761

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgement in the interference.

Claims 7 and 16 recite that the spacer is constructed of a "plastic material." whereas claim 7 of patent ('693) recites "...a thermoplastic material...". One of ordinary skill know thermoplastic materials to refer to synthetic resins that may be softened by heat, and then regain their original properties upon cooling whereas not all plastic materials exhibit this property.

Each of claims 19 and 20 recites "...a clean air envelope..." (in lines 8 and 7 respectively) whereas each of claims 19 and 20 of patent ('693) recites "...an interior space...". The term "clean air envelope" is not an equivalent substitute for the term "interior space" as used in patent '693. The "clean air envelope" in the instant application defines the combination of space within the face mask and space within spacer 50 whereas "interior space" [of said face mask] in patent '693 defines space within the face mask 14 exclusive of the space within spacer 18. Applicant's attention is invited to lines 2,3 and 9,10 of claim 19 in patent '693 which initially defines a face mask having an inhalation port through which a wearer of the mask inhales ambient air and subsequently defines a microphone extending therefrom [spacer 18] and into an interior space of said face mask. The claimed interior space of said face mask is physically different from the combination of space within the face mask and the space within spacer 50 of the instant application. Consequently, these terms "clean air envelope" and "interior space" are not interchangeable equivalent elements.

Art Unit: 3761

3. Claims 1-20 of this application is asserted by applicant to correspond to claim(s) of U.S. Patent No. 5,463,693.

The examiner does not consider these claims to be directed to the same invention as that of U.S. Patent No. 5,463,693 because of the differences between the claims submitted as copied and the actual claims 1-20 of patent ('693) as pointed out above. Accordingly, an interference cannot be initiated based upon these claims.

Further, it is submitted that claims 1-20 of patent ('693) do not define the same subject matter as is set forth in the disclosure of the instant application. Claims 1-20 of patent ('693) include at least one major difference with the the disclosure of the instant application. In claims 1 and 10 of patent ('693) the recitation "...said spacer further having a microphone extending therefrom;..." and in claims 19 and 20, the recitation "...a microphone extending therefrom and into an interior of said face mask...", each defines a microphone which extends FROM a spacer and a microphone which extends from a spacer and INTO an interior of the face mask. The element recited in the claims of the instant application which may be readable upon the microphone of patent ('693) is "...speech reception means...". The "...speech reception means..." as defined in the claims of the instant application is neither recited to extend from a spacer nor extend from a spacer and into the interior of a face mask. Even if the phrase "...extending therefrom..." might be interpreted as defining a microphone which extends in any direction to any extent from a spacer, a reading of the claim language in light of the specification and drawings of patent ('693) reveals that the microphone has only one intended orientation which is within the interior of the face mask.

Art Unit: 3761

Response to Arguments

4. Applicant's arguments filed 04/22/2002 have been fully considered but they are not persuasive for the reasons given herein above.

Conclusion

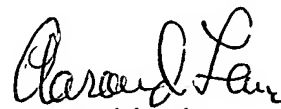
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

July 15, 2002


Aaron J. Lewis
Primary Examiner